

WILLKIE FARR & GALLAGHER LLP

TODD G. COSENZA
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June 14, 2016

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Shelley C. Chapman
United States Bankruptcy Judge for the Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: In re Lehman Brothers Holdings Inc., et al, Case No. 08-13555 (SCC)

Dear Judge Chapman:

Per your request, enclosed is a proposed order (the “Proposed Order,” attached as Exhibit A) which Lehman Brothers Holdings Inc. (“Lehman”) believes confirms the rulings Your Honor made on the record of the June 9, 2016 hearing (the “Hearing”) on Lehman’s Motion to (A) Disallow and Expunge Certain RMBS Claims, and (B) Release Certain Related Claims Reserves (ECF 52640) (the “Motion to Disallow and Expunge”). Unfortunately, the parties have been unable to agree on an acceptable form of order. A redline showing changes between the Proposed Order and the form of order preferred by the RMBS Trustees is attached as Exhibit B. Lehman respectfully requests that Your Honor enter the Proposed Order for the following reasons:

First, as to paragraph 1 of the redline, the RMBS Trustees object to the Proposed Order’s inclusion of the clause “for the reasons set forth on the record at the Hearing.” As Your Honor is aware, findings and rulings were made on the record at the Hearing concerning the Protocol and Your Honor’s prior orders in these cases. Lehman respectfully submits that paragraph 1 of the Proposed Order appropriately incorporates those findings and rulings by reference.

Second, as to paragraph 2 of the redline, there is a dispute between Lehman and Wilmington Trust Company (“Wilmington”), one of the RMBS Trustees. Wilmington seeks to exclude certain claims allegedly included in proof of claim 21135 (“POC 21135”) from the Proposed Order. As background, Lehman’s Motion to Disallow and Expunge included (on Exhibit B to that Motion) all proofs of claim for which Lehman sought disallowance and expungement. POC 21135 — which is purportedly an “omnibus” claim covering all of Lehman’s RMBS-related liability to Wilmington — was specifically included on Exhibit B to that Motion. Despite having ample notice and a full opportunity to do so,

The Honorable Shelley C. Chapman

June 14, 2016

Page 2

Wilmington raised no specific objection to the disallowance and expungement of POC 21135 either in its filings with the Court or at last week's Hearing. Hence, any such objections were waived and, in accordance with Your Honor's ruling, POC 21135 should be disallowed and expunged. Indeed, the first time Wilmington raised any issue concerning POC 21135 was yesterday afternoon. In an attempt to avoid burdening the Court with this issue, we have asked Wilmington several times to explain which specific claims remain from POC 21135 in light of Lehman's Motion to Disallow and Expunge and the Court's rulings on Thursday. Wilmington has not provided Lehman with any explanation. (See Email exchange attached as Exhibit C.) Furthermore, no trust is prejudiced by the expungement of POC 21135. Wilmington filed separate proofs of claim for each Wilmington trust for the claims Wilmington is pursuing against Lehman.

Finally, as to paragraph 3 of the redline, the RMBS Trustees seek to include language in the Proposed Order that states that the RMBS Trustees have been denied the "right, if any, to seek to provide proof in support of the allowance of RMBS Claims through the use of statistical sampling" and "alternative methods." Lehman respectfully submits that Your Honor has **reserved** the parties' respective rights as to sampling and left open (as was set forth in the Protocol Order) the possibility of using an appropriate statistical sample to determine those RMBS Claims which the RMBS Trustees, in their discretion, timely submitted under the Protocol Order. (See Hearing Tr. at 21, attached as Exhibit D (Your Honor noting that "we were going to have this comprehensive process in order to winnow down the number of hits . . . and then at the end we would see where we were, and if at that point, once we had a smaller and more robust and more reliable sample, if it still made sense to do sampling in that context, we would revisit it. But it was never -- there was never an opt-out."). However, Your Honor also has ruled that such a reservation of rights did not exempt the RMBS Trustees from submitting any and all loans through the Protocol that the RMBS Trustees believe should be put back to Lehman. (See *id.* at 36 ("[T]here's no dispute that the loans that were the subject of the letter as to which the trustee's asserted their reservation of rights to seek to prove them up by alternate means, that's not how the protocol operates, by its terms. That in effect, would operate as an opt-out provision, and that's just not the way the protocol works. So as to that, that argument is rejected."))). Accordingly, the RMBS Trustees proposed language concerning the Court's "rejection" of sampling is both inaccurate and unnecessary.

For these reasons, Lehman respectfully requests that Your Honor enter the Proposed Order. We are available to discuss this matter at the Court's convenience.

Respectfully submitted,



Todd G. Cosenza

Enclosures

cc: Counsel to the RMBS Trustees

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x
In re)) Case No. 08-13555 (SCC)
Lehman Brothers Holdings Inc., et al.,) Chapter 11
Debtors.) Jointly Administered
----- x

**ORDER GRANTING DEBTORS' MOTION TO (A) DISALLOW
AND EXPUNGE CERTAIN RMBS CLAIMS AND (B) RELEASE
CERTAIN RELATED CLAIMS RESERVES**

Upon consideration of: (1) the motion (the "Motion")¹ of the above-captioned debtors (collectively, the "Debtors") for entry of an order granting Debtors' Motion to (a) Disallow and Expunge Certain RMBS Claims and (b) Release Certain Related Claims Reserves (ECF 52640); the Declaration of Zachary Trumpp; (2) the RMBS Trustees' Objection to the Motion (ECF 52951); and (3) the Debtors' Reply in support of the Motion (ECF 52960); and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334, Article XIV of the Plan and paragraph 77 of the order confirming the Plan; and it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this proceeding on the Motion is a core proceeding pursuant to 28 U.S.C. §157(b); and a hearing on the Motion having been held on June 9, 2016 (the "Hearing"); and sufficient notice of the Motion having been given; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted for the reasons set forth on the record of the Hearing.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The claims listed on Exhibit B annexed to the Motion are disallowed and expunged in their entirety.

3. The Debtors are authorized to reduce and release the amounts in the RMBS Reserve that relates to claims against SASCO. Consistent with the *Order Pursuant to Section 8.4 of the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors and Sections 105(a), 502(c) and 1142(b) of the Bankruptcy Code Estimating the Amounts of Claims filed by Indenture Trustees on Behalf of Issuers of Residential Mortgage-Backed Securities for Purposes of Establishing Reserves* (the “Reserve Order”) (ECF 25643), this shall consist of 5% of the Reserve (\$250,000,000). This Order shall have no force or effect with respect to the remaining \$4,750,000,000 in the RMBS Reserve.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

5. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: June __, 2016
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

RMBS Trustees' Preferred Form of Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

**ORDER GRANTING DEBTORS' MOTION TO (A) DISALLOW
AND EXPUNGE CERTAIN RMBS CLAIMS AND (B) RELEASE
CERTAIN RELATED CLAIMS RESERVES**

Upon consideration of: (1) the motion (the “Motion”)¹ of the above-captioned debtors (collectively, the “Debtors”) for entry of an order granting Debtors’ Motion to (a) Disallow and Expunge Certain RMBS Claims and (b) Release Certain Related Claims Reserves (ECF 52640); the Declaration of Zachary Trumpp; (2) the RMBS Trustees’ Objection to the Motion (ECF 52951); and (3) the Debtors’ Reply in support of the Motion (ECF 52960); and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334, Article XIV of the Plan and paragraph 77 of the order confirming the Plan; and it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this proceeding on the Motion is a core proceeding pursuant to 28 U.S.C. §157(b); and a hearing on the Motion having been held on June 9, 2016 (the “Hearing”); and sufficient notice of the Motion having been given; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED THAT:

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1. The Motion is granted ~~for the reasons set forth on the record of the Hearing.~~

2. The claims listed on Exhibit B annexed to the Motion are disallowed and expunged in their entirety, except that Wilmington Trust Company, as Trustee's proof of claim number 21135, filed against Lehman Brothers Holdings Inc., shall not be expunged and shall be disallowed only to the extent such claim relates to claims subject to the Protocol that were not submitted pursuant to the Protocol; all other claims asserted pursuant to proof of claim number 21135 shall remain pending claims.

3. Notwithstanding the Protocol Order's decretal paragraph that stated "ORDERED, that each of (i) the RMBS Trustee's right, if any, to seek to provide proof in support of the allowance of the RMBS Claims through the use of statistical sampling, and (ii) the Plan Administrator's right to object to the use of statistical sampling by the RMBS Trustees, is reserved," the RMBS Trustees are prohibited from further pursuing the claims listed on Exhibit B (except for the limited exceptions specifically stated above) through any means available, including, but not limited to, the use of statistical sampling or other alternative methods.

4. 3. The Debtors are authorized to reduce and release the amounts in the RMBS Reserve that relates to claims against SASCO. Consistent with the *Order Pursuant to Section 8.4 of the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors and Sections 105(a), 502(c) and 1142(b) of the Bankruptcy Code Estimating the Amounts of Claims filed by Indenture Trustees on Behalf of Issuers of Residential Mortgage-Backed Securities for Purposes of Establishing Reserves* (the "Reserve Order") (ECF No. 25643), this shall consist of 5% of the Reserve (\$250,000,000). This Order

shall have no force or effect with respect to the remaining \$4,750,000,000 in the RMBS Reserve.

| **5.** **4.**—The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

| **6.** **5.**—All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits.

| **7.** **6.**—This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: June __, 2016
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Summary report: Litéra® Change-Pro TDC 7.5.0.179 Document comparison done on 6/14/2016 11:43:11 AM	
Style name: Standard	
Intelligent Table Comparison: Active	
Original DMS: iw://NYCDMS/NewYork/17460132/3	
Modified DMS: iw://NYCDMS/NewYork/17483626/1	
Changes:	
Add	9
Delete	6
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	15

EXHIBIT C

From: Cosenza, Todd
Sent: Tuesday, June 14, 2016 2:06 PM
To: 'Sigler, Sage'
Cc: Scott Lewis; Sorensen, Matthew; Franklin Top; JPM.Munno, MWilliam; Weitnauer, Kit; Pedone, Richard; Solomon, Jason; Guzman, Daniel; Shalhoub, Paul
Subject: RE: Lehman RMBS Proposed Order

Sage,

I am not trying to be difficult. Before burdening the Court with this issue, I just want to understand which specific claims you believe remain as to POC 21135. As you know, POC 21135 was included expressly in our motion. The first time we learned that you had an objection to expunging and disallowing that POC was yesterday afternoon -- six weeks after we filed our motion and after the hearing. We simply want you to explain which claims you believe remain.

Best,
Todd

From: Sigler, Sage [mailto:Sage.Sigler@alston.com]
Sent: Tuesday, June 14, 2016 9:40 AM
To: Cosenza, Todd <TCosenza@willkie.com>
Cc: Scott Lewis <slewis@chapman.com>; Sorensen, Matthew <MSorensen@willkie.com>; Franklin Top <top@chapman.com>; JPM.Munno, MWilliam <munno@sewkis.com>; Weitnauer, Kit <Kit.Weitnauer@alston.com>; Pedone, Richard <rpedone@nixonpeabody.com>; Solomon, Jason <Jason.Solomon@alston.com>; Guzman, Daniel <guzman@sewkis.com>; Shalhoub, Paul <pshalhoub@willkie.com>
Subject: RE: Lehman RMBS Proposed Order

Any claims not subject to the Protocol. You were very specific in your motion and your presentation at the hearing that your motion was administrative in nature and that the claims you sought to disallow and expunge had already been disallowed and expunged per the language of the Protocol. Are you taking a different position now?

From: Cosenza, Todd [<mailto:TCosenza@willkie.com>]
Sent: Monday, June 13, 2016 11:38 PM
To: Sigler, Sage <Sage.Sigler@alston.com>
Cc: Scott Lewis <slewis@chapman.com>; Sorensen, Matthew <MSorensen@willkie.com>; Franklin Top <top@chapman.com>; JPM.Munno, MWilliam <munno@sewkis.com>; Weitnauer, Kit <Kit.Weitnauer@alston.com>; Pedone, Richard <rpedone@nixonpeabody.com>; Solomon, Jason <Jason.Solomon@alston.com>; Guzman, Daniel <guzman@sewkis.com>; Shalhoub, Paul <pshalhoub@willkie.com>
Subject: Re: Lehman RMBS Proposed Order

Sage,

We requested that all claims included in POC 21135 be expunged. That POC was included expressly in our motion. The Court granted our motion. What specific claims do you believe remain from POC 21135 after the Court's ruling?

Thanks,
Todd

> On Jun 13, 2016, at 11:21 PM, Sigler, Sage <Sage.Sigler@alston.com> wrote:
>
> Maybe I don't understand your question. What claims did Lehman ask the court to expunge that were not
subject to the Protocol (per Lehman's interpretation)?
>
> On Jun 13, 2016, at 8:38 PM, Cosenza, Todd <TCosenza@willkie.com<mailto:TCosenza@willkie.com>>
wrote:
>
> Sage,
>
> I am not understanding your point. I just want to understand which specific claims against LBHI (included in
POC 21135) that you maintain are not subject to the Protocol.
>
> Thanks,
> Todd
>
> On Jun 13, 2016, at 7:47 PM, Sigler, Sage <Sage.Sigler@alston.com<mailto:Sage.Sigler@alston.com>>
wrote:
>
> Todd,
>
> The Protocol deals with R&W claims. POC 21135 encompasses R&W claims subject to the Protocol, as well
as any other claims Wilmington Trust may have against LBHI. The expungement motion and the court's ruling
were specific in disallowing and expunging specific claims subject to the Protocol. POC 21135 should therefore
be preserved to the extent it asserts claims other than the R&W claims subject to the Protocol.
>
> Thanks,
>
> Sage
>
>
> From: Cosenza, Todd [<mailto:TCosenza@willkie.com>]
> Sent: Monday, June 13, 2016 6:22 PM
> To: Sigler, Sage <Sage.Sigler@alston.com<mailto:Sage.Sigler@alston.com>>; 'Scott Lewis'
<slewis@chapman.com<mailto:slewis@chapman.com>>
> Cc: Sorensen, Matthew <MSorensen@willkie.com<mailto:MSorensen@willkie.com>>; Franklin Top
<top@chapman.com<mailto:top@chapman.com>>; .JPM.Munno, MWilliam
<munno@sewkis.com<mailto:munno@sewkis.com>>; Weitnauer, Kit
<Kit.Weitnauer@alston.com<mailto:Kit.Weitnauer@alston.com>>; Pedone, Richard
<rpedone@nixonpeabody.com<mailto:rpedone@nixonpeabody.com>>; Solomon, Jason
<Jason.Solomon@alston.com<mailto:Jason.Solomon@alston.com>>; Guzman, Daniel
<guzman@sewkis.com<mailto:guzman@sewkis.com>>; Shalhoub, Paul
<pshalhoub@willkie.com<mailto:pshalhoub@willkie.com>>
> Subject: RE: Lehman RMBS Proposed Order
>
> Sage,
>
> I still do not understand the comment. Can you please explain specifically which claims Wilmington has
against LBHI that are not subject to the Protocol?
>

> Todd

>

>

> From: Sigler, Sage [<mailto:Sage.Sigler@alston.com>]

> Sent: Monday, June 13, 2016 5:50 PM

> To: Cosenza, Todd <<mailto:TCosenza@willkie.com>>>; 'Scott Lewis'
<<mailto:slewis@chapman.com>>>

> Cc: Sorensen, Matthew <<mailto:MSorensen@willkie.com>>>; Franklin Top
<<mailto:top@chapman.com>>>; .JPM.Munno, MWilliam

<<mailto:munno@sewkis.com>>>; Weitnauer, Kit

<<mailto:Kit.Weitnauer@alston.com>>>; Pedone, Richard

<<mailto:rpedone@nixonpeabody.com>>>; Solomon, Jason

<<mailto:Jason.Solomon@alston.com>>>; Guzman, Daniel

<<mailto:guzman@sewkis.com>>>; Shalhoub, Paul

<<mailto:pshalhoub@willkie.com>>>

> Subject: RE: Lehman RMBS Proposed Order

>

> Todd,

>

> Claim No. 21135 is a master claim that covers any and all claims Wilmington Trust has against LBHI. To the extent that includes claims not subject to the protocol and therefore not subject to the court's ruling on Thursday, Wilmington Trust wants to preserve those claims.

>

> Thanks,

>

> Sage

>

> Sage M. Sigler

> Alston & Bird LLP

> 1201 W. Peachtree Street

> Atlanta, GA 30309

> (404) 881-4531

> sage.sigler@alston.com<<mailto:sage.sigler@alston.com>>

>

> From: Cosenza, Todd [<mailto:TCosenza@willkie.com>]

> Sent: Monday, June 13, 2016 4:51 PM

> To: 'Scott Lewis' <<mailto:slewis@chapman.com>>>

> Cc: Sorensen, Matthew <<mailto:MSorensen@willkie.com>>>; Franklin Top
<<mailto:top@chapman.com>>>; .JPM.Munno, MWilliam

<<mailto:munno@sewkis.com>>>; Weitnauer, Kit

<<mailto:Kit.Weitnauer@alston.com>>>; Pedone, Richard

<<mailto:rpedone@nixonpeabody.com>>>; Sigler, Sage

<<mailto:Sage.Sigler@alston.com>>>; Solomon, Jason

<<mailto:Jason.Solomon@alston.com>>>; Guzman, Daniel

<<mailto:guzman@sewkis.com>>>; Shalhoub, Paul

<<mailto:pshalhoub@willkie.com>>>

> Subject: RE: Lehman RMBS Proposed Order

>

> Scott,

>

> I do not understand your comment to carve out proof of claim number 21135. What do you believe remains

from that proof claim that is not covered by the other proof of claims filed by Wilmington? We will have other comments to your changes to what we had thought would be a straightforward order.

>

> Todd

>

> From: Scott Lewis [<mailto:slewis@chapman.com>]

> Sent: Monday, June 13, 2016 12:30 PM

> To: Cosenza, Todd <TCosenza@willkie.com<<mailto:TCosenza@willkie.com>>>

> Cc: Sorensen, Matthew <MSorensen@willkie.com<<mailto:MSorensen@willkie.com>>>; Franklin Top

<top@chapman.com<<mailto:top@chapman.com>>>; Munno, M. William

<munno@sewkis.com<<mailto:munno@sewkis.com>>>; Kit Weitnauer

<Kit.Weitnauer@alston.com<<mailto:Kit.Weitnauer@alston.com>>>; Pedone, Richard

<rpedone@nixonpeabody.com<<mailto:rpedone@nixonpeabody.com>>>; Sigler, Sage

<Sage.Sigler@alston.com<<mailto:Sage.Sigler@alston.com>>>; Solomon, Jason

<Jason.Solomon@alston.com<<mailto:Jason.Solomon@alston.com>>>; Guzman, Daniel

<guzman@sewkis.com<<mailto:guzman@sewkis.com>>>; Shalhoub, Paul

<pshalhoub@willkie.com<<mailto:pshalhoub@willkie.com>>>

> Subject: Lehman RMBS Proposed Order

>

> Todd,

>

> Attached, please find the RMBS Trustees' comments.

>

> Comments

>

>

> Please consider the Environment before printing this email.

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[4B8LEid47sNJ7PTk1GrCU60F4wTK47YAU&s=JmY6cmR8aFdGEgO8sgFFSejiGRfQv-">NTwpBMOXTwoM&e=>](https://www.mimecast.com&d=CwMGaQ&c=PMBNytmjBbkRgFcdMTUT4Q&r=NyihkIXI15PaZEZy6W_ByPH4pN49hW4QmhPbAJSQV-0&m=SadbyTuhF-)

>

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>

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>*****

>

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>

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EXHIBIT D

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

4 - - - - - x

5 In the Matter of:

6

7 LEHMAN BROTHERS HOLDINGS INC.,

8

9 Debtor.

10 - - - - - x

11 U.S. Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 June 9, 2016

16 2:01 PM

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19

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21

22

23 B E F O R E :

24 HON SHELLY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

Page 2

1 **Hearing re: Doc #52640 Debtors Motion to (A) Disallow and**
2 **Expunge Certain RMBS Claims, and (B) Release Certain Related**
3 **Claims Reserves/**

4

5 **Hearing re: Discovery Conference (Claim of JPMorgan) /**

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25 **Transcribed by: Sonya Ledanski Hyde**

1 A P P E A R A N C E S :

2

3 SEWARD & KISSELL LLP

4 Attorney for

5 One Battery Park Plaza

6 New York, NY 10004

7

8 BY: DANIEL GUZMAN

9

10 ROLLIN BRASWELL FISHER LLC

11 Attorney for

12 8350 E Crescent Parkway, Suite 100

13 Greenwood Village, CO 80111

14

15 BY: MICHAEL ROLLIN

16

17 CHAPMAN & CUTLER LLP

18 Attorney for U.S. Bank National Association, as Trustee

19 111 west Monroe Street

20 Chicago, IL 60603

21

22 BY: FRANKLIN H. TOP III

23

24

25

Page 4

1 ALSTON & BIRD LLP
2 Attorney for
3 One Atlantic Center
4 1201 West Peachtree Street
5 Atlanta, GA 30309

6

7 BY: SAGE M. SIGLER

8

9 WILLKIE FARR & GALLAGHER LLP
10 Attorney for
11 787 Seventh Avenue
12 New York, NY 10019

13

14 BY: PAUL V. SHALHOUB
15 TODD COSENZA
16 THOMAS H. FRENCH

17

18 ALSO PRESENT TELEPHONICALLY:

19

20 PATRICK MOHAN
21 CELINE BUEHL
22 CINDY DELANO

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1 loan file, and then to process the data that we get from
2 reviewing the loan file, and then submitting it to Lehman,
3 and then there's obviously going to be costs after that.
4 And there was --

5 THE COURT: Okay, I need to clarify this, because
6 I'm not thinking about it in the right way.

7 MR. TOP: Sure.

8 THE COURT: So there's a term, covered loans.

9 MR. TOP: Correct.

10 THE COURT: It comes from the estimation motion.
11 That's where it was born. It's not in the protocol anywhere
12 else.

13 MR. TOP: It was included -- it's in the protocol.

14 THE COURT: It's in the protocol.

15 MR. TOP: We did include it in the estimation
16 motion. It has its genesis even prior to the estimation
17 motion. We previewed -- before filing the estimation
18 motion, we had discussions with Lehman about how the heck
19 are we going to try to resolve these claims?

20 THE COURT: All right, so let's just take -- the
21 listed loans are all covered loans?

22 MR. TOP: That's correct.

23 THE COURT: Okay. So the covered loans are
24 clearly subject to the protocol.

25 MR. TOP: That is correct.

1 THE COURT: Okay. So with respect to those, your
2 argument is very simply that you had the right to make a
3 determination to not submit certain covered loans, and seek
4 to do sampling on them.

5 MR. TOP: Right, I guess I would say it a little
6 bit differently. I would say it that because of the losses
7 on those particular loans, the cost of reviewing them on a
8 loan-by-loan basis and submitting them through the protocol
9 was probably cost-prohibitive, in our view, and such that
10 while we weren't going to submit them through the protocol,
11 we wanted to reserve our right to somehow quantify the
12 damages with respect to those particular loans using an
13 alternative method, whether that be sampling or something
14 else.

15 THE COURT: But you see, that's different than
16 what I thought until moments ago, which is I thought what
17 you were saying was that the loans that you were objecting
18 to the expungement of were all transferor loans, and not
19 covered loans.

20 MR. TOP: That is true, too. So we have two
21 buckets of loans we're objecting to.

22 THE COURT: Okay, but to the extent that the loans
23 you are objecting to are covered loans, your argument, then,
24 on the definitions and the protocol, your argument is not
25 that it's not covered, that they're not subject to the

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1 protocol, you're just saying that the reservation of rights
2 means that you didn't have to submit them, because you
3 determined that it's not economic, and that after the
4 protocol otherwise runs, and we are at the stage of looking
5 at those claims for allowance or disallowance, you would get
6 to renew your motion to do sampling.

7 MR. TOP: Or some other alternative means of
8 resolution, but that's right.

9 THE COURT: But that's just not what the protocol
10 says or how it was intended to operate. The bid and ask
11 leading to the protocol, one of the issues that we were
12 dealing with was that not all the loans were covered. So
13 specifically, what everyone negotiated around when I
14 indicated that I was not going to go down the sampling road
15 at that juncture, was that we were going to have this
16 comprehensive process in order to winnow down the number of
17 hits, if you will, and then at the end we would see where we
18 were, and if at that point, once we had a smaller and more
19 robust and more reliable sample, if it still made sense to
20 do sampling in that context, we would revisit it.

21 But it was never -- there was never an opt-out. I
22 mean, there was never an opt-out, or to take you up on the
23 common sense point that it doesn't make economic sense to
24 put them through the protocol, there wasn't a provision that
25 said, upon the certification of the trustees that it's non-

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1 economic, et cetera, et cetera, they're going to do
2 something else. It's just inconsistent with the structure,
3 and the clear words of the protocol -- I believe entirely,
4 and without question, with respect to everything that you
5 concede is a covered loan. Because either under your
6 formulation of what claims are subject to the protocol,
7 these are claims that are subject to the protocol.

8 MR. TOP: That's correct. And Your Honor has
9 identified our argument with respect to that, right? Our
10 argument is that with respect to that group of loans, we did
11 not put them through the protocol. We admit that. And our
12 argument is, because of the reservation of rights language,
13 we would like to have, and reserve the right to quantify
14 those using an alternative method of determination, be that
15 sampling or something else, at least reserve that right, and
16 that's our argument, and you put your finger on it, and
17 you're either going to agree with that argument or you're
18 not going to agree with that argument.

19 THE COURT: Well, I think I don't agree with the
20 argument, but also belt and suspenders I don't agree with
21 the argument because of the extension order. Because that
22 very clearly says there's going to be an extension on the
23 deadlines for which you're being extended, and everything
24 else gets expunged. So I think if there were any ambiguity
25 whatsoever -- and right now I just talking about the covered

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1 loans, right -- that it just doesn't stand up. And I
2 appreciate that the trustees are -- that there's a cost
3 element here. And I heard you loud and clear on that point
4 when we went through the process of coming up with the
5 protocol.

6 So I think with respect to the covered loans, my
7 ruling is that the protocol did not provide for this kind of
8 an opt-out, and had the reservation of rights kick in, so
9 that without having going through the protocol, there would
10 be an opportunity to seek to have those claims allowed by
11 sampling or otherwise. And that, in combination with the
12 language in the extension order, means that those claims are
13 properly expunged. So now I think we need to pivot, which
14 has become a very significant word, I guess, so lately. We
15 need to turn to anything else -- loans that are not, in your
16 terminology, covered loans, right?

17 MR. TOP: Right.

18 THE COURT: Okay. And there the argument's a
19 little bit different, right?

20 MR. TOP: Little bit different. So taking a look
21 at the protocol order itself --

22 THE COURT: Right.

23 MR. TOP: It of course has, it references RMBS
24 claims, and there is a notation in there that says
25 capitalized terms not defined herein have the meaning set

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1 forth in the cross-motion. The problem is, there was a
2 defined term, RMBS claims in the protocol itself. And
3 that's down in Section 3 of the protocol. I'll give you the
4 exact citation here. It's Section 3(e)(i) on Page 4. And
5 so before we even -- and so this definition comes in the
6 context of this RMBS claim protocol, and so just jumping
7 back to the beginning of this claim protocol, we talk about
8 gathering the claim files, and the protocol provides that we
9 are to provide letters of direction to two master servicers
10 on certain of the covered loans, and so we went out and
11 gathered the loan files, with respect to all these covered
12 loans. And secondly, Lehman was supposed to provide us some
13 information from Aurora, there was like, 51,000 covered
14 loans that were --

15 THE COURT: That's in Roman 2, right.

16 MR. TOP: That's in Roman 2, and the hard drive
17 was to contain all of the images, electronic images Aurora
18 had in its system for the covered loans. This is on Page 2.

19 THE COURT: Mm-hmm. Where does it say covered
20 loans in Roman 2?

21 MR. TOP: It says It's Roman Numeral II,
22 Subsection B, two little Is, 1, and 3.

23 THE COURT: Okay.

24 MR. TOP: Okay, and so there's two reference to
25 covered loans there, and they were to provide us with

1 they're of little or no value. That makes sense, from our
2 perspective.

3 To have 16 months go along, agree to the
4 expungement motion, not to come with us for an extension on
5 any issues, make various representations to us throughout
6 the entire process, to us, to the Court that they're not
7 pursuing them, and now to come forward with this objection
8 to our motion, which is simply an administrative motion, is
9 a little bit astounding, frankly, from our perspective.
10 This is something, that really, if there was some confusion,
11 it could have been corrected really early in the protocol,
12 and frankly, the representations that they made to us and to
13 the Court during this process, they are now being directly
14 contradicted by the counsel, for the trustees.

15 So this is -- I really don't know what to make of
16 why we're here today. That order was simply an
17 administrative order to simply clean up the claims registry,
18 because we're told by our client that the claims registry is
19 massive in this case, and simply way or sort of cleaning it
20 up. And now that we're at this position, in response to
21 that motion I would have thought we would have been here, if
22 this really was an issue, back in January, when we talked
23 about this with Your Honor with various counsel present,
24 where there was a representation made that they weren't
25 pursuing the transfer loans. I thought maybe they'd

1 reconsider that in March when they sought the extension,
2 they would have raised this issue with us. Instead, we gave
3 them the extension, because frankly, for the number of loans
4 that were left, there were obviously always administrative
5 issues. Given the extra two months, makes total sense. But
6 not to raise this as an issue, but then to raise it after
7 they get the extension is really -- we're sort of shocked by
8 why we're here today.

9 Your Honor, just one last point, because there
10 seems to be all sorts of definitional -- it was clear that
11 the protocol motion, our cross-motion, was the motion that
12 was granted by the Court. The definitions in there were
13 intended -- and we had the hearing, it was intended to cover
14 everything, that was everyone's intention. We included a
15 footnote in the protocol order, to make sure there was
16 little confusion about this, that it was intended to cover
17 all the loans. It incorporates our definition. We agree
18 with Your Honor's views as described therein, was really
19 just described the claims process, not to modify prior
20 definitions, and not to somehow limit the universe of loans.
21 So we think for all those reasons, Your Honor, we think our
22 motion should be granted, and all these claims should be
23 expunged. Thank you.

24 THE COURT: All right, if you would give me about
25 five minutes or so, and then I'm going to come back and let

1 you know what I'd like to do, all right?

2 (Recess)

3 THE COURT: Okay. Thank you very much. I
4 appreciate your answering all the questions I had coming
5 into this. I think, as I indicated to Mr. Top, once the
6 clarification was made, with respect to which loans we're
7 talking about, the two buckets being covered loans and
8 transferor loans. I think what I said to Mr. Top, with
9 respect to the operation of the reservation of rights to use
10 sampling or alternate means, is in fact my ruling. As it
11 emerged, there's no dispute that the loans that were the
12 subject of the letter as to which the trustee's asserted
13 their reservation of rights to seek to prove them up by
14 alternate means, that's not how the protocol operates, but
15 by its terms. That in effect, would operate as an opt-out
16 provision, and that's just not the way the protocol words.
17 So as to that, that argument is rejected.

18 As to the transferor loans, the argument as to
19 that centered around the use of the term covered loans in
20 various portions of the protocol, but given the history and
21 the genesis of the protocol, which began with the estimation
22 motion, was responded to with the cross-motion, which fully
23 embraced all of the loans, to use the terminology that was
24 used initially, the covered loans and the transferor loans.
25 Notwithstanding the fact that the number of loan fields,

1 when you add them up under the protocols, the protocols
2 contemplated the progression towards the finish line, it
3 adds up to roughly the number of covered loans. My ruling
4 is that the protocol, in fact, covered everything, and that
5 to the extent that -- and the numbers are not inconsistent
6 with that, because as the way this has developed, it has
7 certainly been -- has certainly seemed clear that the
8 transferor loans were not viewed as having much, if any,
9 value, and therefore it's appropriate that the march toward
10 the finish line, and submitting all these loan files,
11 properly focused on loans that were not transferor loans.

12 Moreover, the facts and circumstances, and the
13 language of the extension order, created another occasion
14 and reinforce my view that these claims should be expunged.
15 The inclusion of the words, or otherwise, in addition, the
16 language that Mr. Cosenza pointed out with respect to that
17 subset of loans just add up to a picture in which it's clear
18 to me that this process was intended to, and did, and
19 everybody was operating under the impression that it related
20 to all the loans. So for all those reasons, and including,
21 with respect to the reduction of the reserves, I'm going to
22 enter an order granting Lehman's motion.

23 All right? All right, will you share an order
24 with each other and send it to us, once you have everyone's
25 sign-off? Thank you very much, and let me also say that I

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1 know that there was a lot of back and forth on the
2 scheduling of this, and I very much appreciate your
3 flexibility. I'm about to start three weeks of trial,
4 travel, trial, travel, and I just, I wanted to see you
5 sooner rather than later. So I appreciate that some of your
6 colleagues aren't here today, and I appreciate that you were
7 still willing to come in. All right? Okay, thank you.
8 Thank you.

9 (Whereupon these proceedings were concluded at
10 3:04 PM)

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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8 Sonya Ledanski Hyde

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25 Date: June 13, 2016